HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

Chapter VIII Rule 32 (2)(b)

Description of the case.

C.M. No. 5087/2001 (M/S)
(Old No. 18257/1994)

Inderjit Saluja
vs
Sub Divisional Magistrate,
Rent Control and eviction Officer,
Roorkee, Haridwar & others.

Approved for reporting

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~~Not Approved for Reporting~~

Date of decision 23.9.2004

Initial of Judge

In the High Court of Uttaranchal, at Nainital.

Civil Misc. W.P. No. 5087/2001 (M/S)
(Old No. 18257/1994)

Inderjit Saluja **Petitioner.**

Vs.

Sub Divisional Magistrate/
Rent Control and Eviction Officer,
Roorkee, Haridwar & others **...Respondents.**

Dated: 23-9-2004

Hon'ble Rajesh Tandon J.

By the impugned order dated 17-5-1994 the vacancy has been declared. The petitioner has challenged the said order of vacancy by way of the present writ petition.

Briefly stated the facts of the case are that the dispute relates to a shop situated on a ground floor bearing Municipal No. 34/1 Mohalla Sot, Kabari Bazar, Tehsil Roorkee, District Hardwar. The petitioner has submitted that he is in occupation of the premises and previously the shop was in the tenancy of Mela Ram, maternal grand father of the petitioner and since he was not having any male issue and was living as a family member, and therefore Mela Ram has executed a will in favour of the petitioner on 11-11-1970.

The proceedings for vacancy were started under section 16(1) of U.P. Act No.13 of 1972. The Rent Control Inspector was deputed to inspect the premises. The Rent Control and Eviction Officer thereafter after hearing the parties has declared the vacancy on the ground that the original tenant has no right to execute a will.

In *Ishwar Chand Vs. ADM (Civil Supply)/R.C. & E.C., Kanpur Nagar; 2000(1) Allahabad Rent Cases, 386* reported in *1002 A.R.C. volume-II*, it has been held that the tenant has no right to execute the will. It has been held as under:-

> *"Learned counsel for the petitioner contended that Ram Sahodar had executed a will in favor of the petitioner on 20th February, 1987 and he is entitled to inherit the tenancy rights on the basis of the will. It is settled law that tenancy rights cannot be transferred by a will in favour of any person*

vide Ratan Lal vs. Additional District Judge, Bulandshahr and others, 1970 ARC 251: Devendra Kumar v. III Additional District Judge and others, 1980 ARC 519 and Abhinandan Prasad Jain v. District Judge, Saharanpur and others, 1982 (1) ARC 708."

The Rent Control and Eviction Officer therefore has rightly declared the vacancy, as the petitioner has no legal status to occupy the premises within the meaning of Section 3(g) of U.P.Act No. 13 of 1972.

In view of the facts and circumstances of the case, the order of vacancy requires no interference under Article 22/6/227 of the Constitution of India and the writ petition is dismissed.

ISB **(Rajesh Tandon, J.)**